

MARICOPA COUNTY BOARD OF SUPERVISORS MINUTE BOOK

**INFORMAL SESSION
January 17, 2006**

The Board of Supervisors of Maricopa County Arizona convened in Informal Session at 9:00 a.m., January 17, 2006, in the Board of Supervisors' Conference Room, 301 W. Jefferson, Phoenix, Arizona, with the following members present: Don Stapley, Chairman, District 2; Fulton Brock, Vice Chairman, District 1 (entered late), Max W. Wilson, District 4 and Mary Rose Wilcox, District 5. Absent: Andrew Kunasek, District 3. Also present: Fran McCarroll, Clerk of the Board; Shirley Million, Administrative Coordinator; David Smith, County Manager; Paul Golab, Deputy County Attorney. Votes of the Members will be recorded as follows: aye-nay-absent-abstain.

UPDATE ON STATUS OF THE PRE-AHCCCS LITIGATION

Presentation regarding the status of the pre-AHCCCS "tail" litigation filed against Maricopa County by several hospitals and other providers.

Sandi Wilson, Deputy County Manager
Shawn Nau, Director, Health Care Mandates
Don Bivens, Outside Counsel, **Did not attend**
Jennifer Norie, Outside Counsel

Sandi Wilson brought the Board up to date on this hospital litigation, which has been ongoing for several years. She said the trial would be soon and there were several issues that would be introduced at the trial that the Board should be aware of. (C3906009M00) (ADM2104)

Shawn Nau gave a brief history of this matter from the early 1990's to 2001 and said that Maricopa County paid millions of dollars to hospitals during that time period for indigent health care. This outlay ended on October 1, 2001, with the implementation of Proposition 204. AHCCCS is now totally responsible for the entire program and Maricopa County is no longer involved. The items in litigation are to determine what additional costs Maricopa County owes the hospitals. During this time period thousands of claims were filed by hospitals and the vast majority were automatically paid by the County. On April 1, 1998, after a global settlement agreement between the County and various hospitals, the number of claims and the dollar value of those claims escalated dramatically. Between April 1, 1998, and the program's end on October 1, 2001, there was an average of 19% per year increase in the dollar amount of the claims billed to Maricopa County. That increase far outstrips both the AHCCCS Administration's claims/payment during that same period and also the medical rate of inflation. It was found that the hospitals were simply billing the County for everything that didn't have another payer source. It has placed a huge burden on County employees and taxpayer monies to research and separate the valid claims from those that were not valid and to deny payment to those that were not valid.

~ Supervisor Brock entered the meeting ~

Chairman Stapley asked how many law suits were filed during that time period. Mr. Nau replied that there were several segments to the litigation and roughly 100,000 claims involved in the last two segments. "It was a huge challenge to try to get a team together to be able to defend and litigate on all of these various claims. It continues to be a huge challenge." He said that there were often multiple errors on the same claim. To give an idea of how massive the evidence found, examined and documented in this matter, he explained, "There are roughly 4,000,000 records of potential evidence that are being maintained in a warehouse at County taxpayer expense." He said that the staff who worked to number and catalog the records involved in this case deserve a great deal of credit.

**INFORMAL SESSION
January 17, 2006**

Sandi Wilson said, "We're talking about hundreds of millions of dollars in litigation that we are up against at this point in time. Anything that they didn't have a payer source for they sent to us, in reality, even some that did have a payer source they sent to us. So, it really looks like they dumped a lot of what they considered indigent care into this pile whether it was or was not valid according to the law that was in place at that point."

Mr. Nau presented a slide show overview of the problem and said this presentation was part of the budget preparation process for FY 2006-07 to apprise the Board of the potential impact of these claims over the coming fiscal year. He stated, "We anticipate that there are going to be at least one and probably two very large trials during the course of this calendar year which could potentially impact Maricopa County's budget in FY 2007. The following are of greatest concern:

- A negative outcome in these trials could significantly impact our ability to continue the anticipated General Fund capital construction projects, both administratively and in the criminal justice and the court system
- A negative outcome could affect funding for other important programs like criminal justice and employee compensation.

Mr. Nau said that an excellent team has been gathered to prepare for the trials. He was concerned that the Court has adopted a "sampling methodology" so that rather than asking plaintiffs to prove-up the 100,000 claims involved, a statistician was hired to review the claims pool and identify a sample for each type of claim and only the sample would be litigated and the result applied to the entire pool to determine the end result. Discussion ensued on this development initiated by a question from Supervisor Brock. Mr. Nau gave examples of the many errors in the hospital claims that were made initially and perpetuated in continued misinformation, such as:

- Claims that were settled and the same claim resubmitted for a double payment.
- Claims paid by the patient and subsequently also submitted to the County for the full amount.
- Claims filed after the six-month time limitation, submitted to AHCCCS and resubmitted to the County.
- Eligibility and residency claims acknowledged to be wrong that still are in litigation against the County.
- Claims rightfully sent to another county and also submitted to Maricopa County and in this litigation.
- Charity cases written off by hospital to receive federal reimbursement, and the same amount also included in claims against the County.

He explained that there are various reasons why a large percentage of these claims should be dismissed but this is not expected to happen. He added that it could be a problem to get a jury to "pay attention" to long explanations that would help them understand why such claims are invalid.

Chairman Stapley asked if there was any legal measure that could be taken to protest the judge's decision to try the case by sampling as opposed to forcing the burden of proof on the hospitals. Mr. Nau said that the defense has objected to this at every opportunity to preserve the issue for appeal. He does hope this matter could still be settled as earlier cases were settled with several different hospitals.

MARICOPA COUNTY BOARD OF SUPERVISORS MINUTE BOOK

**INFORMAL SESSION
January 17, 2006**

Supervisor Wilcox asked if AHCCCS is experiencing the same problem with the hospitals. Mr. Nau replied that their administration of claims has a big benefit that the County does not have. "They have their own emergency rule-making authority" and when they see a problem being created they can usually step-in quickly to resolve it. He added that when AHCCCS took this program on in October the rules were greatly streamlined and this simplified the eligibility process to a basic, simple document. He added that it is no longer the problem that it was for the County.

David Smith said he would be surprised if the Boards of Directors for the various hospitals had this information (shown on the slide show) and said he believed that Gammage and Burnham may be keeping the truth from hospital Board members or they are telling them that the County is the one operating in bad faith. He suggested tat the Board should try to get on the agenda of these (hospital) Board of Director's meetings and take this power point presentation." He felt that members of the hospital boards need to be informed of what is happening.

Chairman Stapley said that certain hospitals have allowed a law firm to file many bad faith claims against the County that included "anything the hospitals didn't get paid for" because it was easier to do this than to review all those cases for accuracy. This thrust the burden of paying for these 100,000 claims onto the taxpayers. He said that he has talked to some hospital board members and added that it is now getting to the point where those members have a lot of personal risk.

Supervisor Brock said he felt discussion would be more appropriate in Executive Session to obtain legal advice from counsel on these proceedings and what action could be taken.

MEETING RECESSED TO EXECUTIVE SESSION

Chairman Stapley recessed the open meeting at 10:50 a.m. to reconvene in Executive Session in the Tom Sullivan Conference room, 301 West Jefferson, to confer with County Counsel on the above matter and to consider the following items listed on the Executive Agenda dated January 17, 2006, pursuant to listed statutory authority.

LEGAL ADVICE; PENDING OR CONTEMPLATED LITIGATION -- ARS §38-431.03(A)(3) AND (A)(4)

1. **Compromise Cases –** Barbara Caldwell, Outside Counsel
Fernandez, Mary J. Ramirez, Gerardo
Flores, Shelia Tavera, Sonia

PENDING OR CONTEMPLATED LITIGATION; SETTLEMENT DISCUSSIONS CONDUCTED IN ORDER TO AVOID OR RESOLVE LITIGATION – ARS §38-431.03(A)(4)

2. **Legal advice regarding back pay for Vivian Ogden and Lynn Dockery**
Clarisse McCormick, Deputy County Attorney
Steve Bartlett, Director of Finance and Administration, OCIO & Telecom
Gwynn Simpson, Director, Human Resources
Shawn Nau, Director, Health Care Mandates
LeeAnn Bohn, Budget Administrator, OMB

MARICOPA COUNTY BOARD OF SUPERVISORS MINUTE BOOK

INFORMAL SESSION
January 17, 2006

**LEGAL ADVICE; PENDING OR CONTEMPLATED LITIGATION; SETTLEMENT DISCUSSIONS
CONDUCTED IN ORDER TO AVOID OR RESOLVE LITIGATION – ARS §38-431.03(A)(3) and (A)(4)**

3. **Regarding Severance/Settlement Agreements offered pursuant to HR2423 as part of reduction in force and abolishment of positions within the Maricopa County's Attorney's office**

Sally Wells, Chief Assistant County Attorney
Gwynn Simpson, Director, Human Resources
David Smith, County Manager
Elizabeth Yaquinto, Deputy County Attorney

LEGAL ADVICE; PENDING OR CONTEMPLATED LITIGATION -- ARS §38-431.03(A)(3) AND (A)(4)

4. **Advice regarding legal issues and options concerning County Regional School District/
Accommodation School funding and audit issues**

Chris Keller, Chief Counsel, Civil Division
Bruce White, Deputy County Attorney
Dean Wolcott, Outside Counsel
Brian Hushek, Deputy Budget Director
Tom Manos, Chief Financial Officer
Ross Tate, Internal Auditor

**LEGAL ADVICE; PENDING OR CONTEMPLATED LITIGATION; SETTLEMENT DISCUSSIONS
CONDUCTED IN ORDER TO AVOID OR RESOLVE LITIGATION – ARS §38-431.03(A)(3) and (A)(4)**

5. **David Javier Rodriguez, Sr., et al., v. Joseph M. Arpaio, et al.,
Maricopa County Superior Court No. CV2004-001737**

Peter J. Crowley, Risk Manager
Ted Howard, Claims Manager
Richard Stewart, Deputy County Attorney
Kathleen L. Wieneke, Outside Counsel
Jennifer L. Holsman, Outside Counsel

MEETING ADJOURNED

After discussion on the above items and there being no further business to come before the Board, the meeting was adjourned.

ATTEST:

Don Stapley, Chairman of the Board

Fran McCarroll, Clerk of the Board